

OCT 14 1940

CHARLES ELMORE CHAPLEY  
CLERK

**Supreme Court of the United States**

**October Term, 1940.**

No. **507** ✓  
.....

ATANASIO SITCHON,

*Petitioner (Plaintiff),*

vs.

AMERICAN EXPORT LINES, INC.,

*Respondent (Defendant).*

---

---

***Petition for Writ of Certiorari to the Circuit  
Court of Appeals for the Second Circuit  
and Brief in Support of Same.***

---

---

WILLIAM MACY,  
*Counsel for Petitioner.*



## **I N D E X .**

---

	PAGE
<b>PETITION FOR WRIT OF CERTIORARI</b>	
Opinions Below .....	1
Jurisdiction .....	1
Summary and Short Statement of the Matters In- volved .....	2
Questions Raised by the Case .....	4
Reasons Relied on for the Allowance of the Writ	5
Prayer .....	5
<b>BRIEF FOR PETITIONER</b>	
Statement of the Case .....	7
Specification of Errors .....	7
Summary of Argument .....	8
Argument .....	8

---

### **TABLE OF CASES CITED.**

Bonici v. Standard Oil Co., 103 Fed. (2) 437 .....	3, 5, 10
Great Northern Ry. Co. v. Reid, 245 Fed. 86 .....	5, 12
Moffett, Hodgkins & Clarke Co. v. Rochester, 178 U. S. 373 .....	5
Rosenblum v. Manufacturers Trust Co., 270 N. Y. 79 .....	9
Texas & Pacific Ry. Co. v. Dashiell, 198 U. S. 521... 4, 5, 8, 9	
Tulsa City Line v. Mains, 107 Fed. (2) 377 .....	5, 12

---

### **Textbooks.**

Clark on Equity §372 .....	9
Williston on Contracts §1540 .....	9



# Supreme Court of the United States

OCTOBER TERM, 1940.

ATANASIO SITCHON,  
*Petitioner (Plaintiff),*

vs.

AMERICAN EXPORT LINES, INC.,  
*Respondent (Defendant).*

No. ....

## PETITION FOR WRIT OF CERTIORARI.

TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

Your petitioner, ATANASIO SITCHON, plaintiff, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a judgment of that Court entered on August 20, 1940.

### Opinions Below.

The opinion of the District Court for the Southern District of New York is printed at page 52 of the Record. The opinion of the Circuit Court of Appeals is reported in 113 Fed. (2d) 830.

### Jurisdiction.

The date of the judgment to be reviewed is the date of the judgment of the Circuit Court of Appeals affirming the

decision of the District Court, made August 20, 1940. The statute giving jurisdiction is Section 240-A of the Judicial Code, Title 28 U. S. C. Section 347, as amended by the Act of February 13, 1925.

**Summary and Short Statement of the  
Matter Involved.**

Plaintiff, a seaman, while serving as a cook on board defendant's vessel, *S. S. Exchange*, was injured on June 10, 1938, by being struck on the head by the handle of a defective meat grinder. Plaintiff received treatment at the Marine Hospital in New York, and an abstract of the hospital record stated, among other things, (R., 20):

"8/8/38—X-ray examination of skull shows slight increased density in the left supraorbital region, but no definite evidence of any fracture."

A neurological finding was made at that hospital on August 19, 1938, that (R., 46):

"patient should be given a sedative, encouragement and advice to keep working."

Plaintiff, through his attorney, had made claim upon defendant, and in connection with settlement negotiations, plaintiff's attorney obtained the abstract and delivered it to defendant's claim agent (R., 20). Negotiations for settlement culminated on November 14, 1938, when plaintiff, through his attorney, settled his claim against the defendant for \$180. At that time he executed a release under seal covering all his injuries known and unknown, present and future, for which defendant might be liable (R., 14).

Sometime later plaintiff was compelled to enter another Marine Hospital, where X-rays disclosed that he was actually suffering from a fractured skull with definite

brain injury (R., 27). Plaintiff was operated upon for these injuries in June, 1939 (R., 47). His impaired condition is permanent (R., 48, 9).

Plaintiff was misled by the inaccurate and misleading hospital report in making a settlement of \$180 (R., 33-36). No claim is made of fraud or misrepresentation on defendant's part. Plaintiff thereupon brought the present action to recover for these injuries (R., 52), to which action defendant interposed a plea of the release in bar. Defendant then moved for judgment dismissing the complaint on the basis of this release (R., 2), and upon consideration of the affidavits submitted on both sides the District Court dismissed the complaint (R., 65).

The Circuit Court of Appeals (L. Hand, A. N. Hand and Chase, Circuit Judges), considered this case as one where both parties labored under a mistake regarding the injuries, but held, nevertheless, that the release could not be avoided for this mistake because plaintiff had had the advice of his own physician and attorney; and sought to distinguish its holding in the case at bar from its own prior decision in *Bonici v. Standard Oil Co.* (103 F. 2nd, 437), in which a similar release was set aside, upon the ground that in the *Bonici* case the seaman had acted upon the advice—honestly though erroneously given—of his employer's doctor.

The Circuit Court of Appeals also attempted to distinguish the case at bar from the decision of the Circuit Court of Appeals of the Tenth Circuit in *Tulsa City Lines, Inc. v. Mains* (107 F. 2nd 377) (where a release was set aside which had been executed by a passenger to the railroad company, the passenger acting upon incorrect statements made both by the doctor for the carrier and her own physician) saying that the holding in the *Tulsa* case was bad law for the reason that there the passenger had had the independent advice of her own physician and her counsel as well as the advice of the company's doctor.

While it is true that the doctor in the case at bar was not hired by defendant, it is equally true that he was not plaintiff's personal physician, but a doctor attached to the Marine Hospital where plaintiff received treatments after his injury.

Furthermore, the release, broad as it is in form, must be considered in connection with the erroneous hospital diagnosis upon which both plaintiff and defendant acted in negotiating the settlement (*Texas & Pacific Ry. Co. v. Dashiell*, 198 U. S. 521).

The form of the release—that is, the extraordinary repetition of words which in substance mean that the releasor is releasing known and unknown, present and future claims, cannot destroy the equities of plaintiff's case. If the release were in the usual form, *i. e.*, of all claims which the releasor now has or may hereafter have—there can be no question that, for the mistake induced by the hospital, the release would be avoided. True, defendant sought to make it clear that the release included every possible claim. That effort is understandable and no complaint can be made on that score. But, it is equally true that, when plaintiff executed such a release, he was informed that it was impossible for him to have the injury from which he in fact was actually suffering. True, also, that defendant did not cause the error; but that makes no legal difference. The diagnosis made by the hospital was one upon which plaintiff had the right to rely, and that is all that we are concerned with. Plaintiff had an *existing* injury. He was told that he did not have it. The representation of the non-existence of the skull fracture was directly responsible for the release for \$180 of a claim for a permanent and dangerous injury (R., 35).

#### **Question Raised by the Case.**

Where a seaman is advised by a Marine Hospital after an accident that there is no sign of a skull fracture, and



he settles his claim against the ship-owner for \$180, executing (while represented by an attorney) a release to the employer covering known and unknown injuries, may he rescind the release where he subsequently discovers that the hospital diagnosis which both he and his employer relied upon, was grievously inaccurate, and that he was actually suffering from a skull fracture and brain injury which permanently incapacitates him?

**Reasons Relied on for the Allowance  
of the Writ.**

Your petitioner respectfully prays that the writ be allowed for the following reasons:

1. Because the decision of the Circuit Court of Appeals for the Second Circuit is not only wrong in principle but is in conflict with the decisions of this court in *Texas and Pacific Railway Co. v. Dashiell*, 198 U. S. 521 and *Moffett, Hodgkins & Clark v. Rochester*, 178 U. S. 373.

2. Because the decision of the Circuit Court of Appeals is in direct conflict with the decision of that court in *Bonici v. Standard Oil Co.*, 103 Fed. (2) 437.

3. Because the decision of the Circuit Court of Appeals for the Second Circuit is in direct conflict with the decision of the Court of Appeals for the Tenth Circuit in *Tulsa City Line, Inc. v. Mains*, 107 Fed. (2) 377 and the decision of the Circuit Court of Appeals for the Ninth Circuit in *Great Northern Railway Co. v. Reid*, 245 Fed. 86.

**Prayer.**

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of

this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record and all proceedings of the case, numbered and entitled on its Docket No. 374—*Atanasio Sitchon*, Plaintiff-Appellant v. *American Export Lines, Inc.*, Defendant-Appellee, and that the said Decree of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just; and your petitioner will ever pray.

WILLIAM MACY,  
*Counsel for Petitioner.*

Dated, New York, October 1, 1940.

